No. 21,438

United States Court of Appeals

For the Ninth Circuit

ELINOR E. PETERSEN,
Appellant,

vs.

ALAMEDA WEST LAGOON HOME OWNERS' ASSOCIATION, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of California

BRIEF FOR APPELLEES

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STATEMENT OF THE CASE

This is an appeal by Elinor E. Petersen, appearing in propria persona, from an order by the United States District Court for the Northern District of California, Honorable Alfonso J. Zirpoli, Judge, which order dismissed her amended complaint and rendered judgment on the pleadings in favor of defendants.

Appellant filed her original complaint May 10, 1966, and thereafter, on June 15, 1966, filed her amended complaint. According to appellant's brief on this appeal, said action was brought for injunctive relief, damages, and to quiet title to certain real property

described in said amended complaint. Appellant alleges that her title derives from a Spanish Land Grant guaranteed to her by the Treaty of Guadalupe-Hidalgo of 1848.

All defendants which had been served in said action jointly moved the Court for an order dismissing said amended complaint and for judgment on the pleadings. Said motion was made on the grounds that the amended complaint failed to state a claim upon which relief could be granted and that the District Court lacked jurisdiction of the subject matter of the alleged cause of action in said amended complaint.

Said motion was heard July 25, 1966, and granted September 19, 1966 by the Honorable Alfonso J. Zirpoli, District Court Judge. Appellant filed her Notice of Appeal on September 29, 1966.

ARGUMENT

I. PLAINTIFF FAILS TO STATE A CLAIM

(A) The Spanish Land Grant

After sorting out the verbose language of appellant's pleadings, appellant's claim is at best a claim to quiet title to real property. Any rights of appellant to an injunction or for damages rest entirely upon her alleged title to the premises described in her amended complaint. The only legal issue raised in her amended complaint is title to real property. It should be noted that the properties to which appellant claims title are tideland lots which were arti-

ficially filled by one of the appellee's predecessor in title, the South Shore Land Company.

It is not entirely clear how appellant claims title to the real property involved in this litigation, but she alleges that she derives title from an 1820 Spanish Land Grant to Don Luis Peralta, that her title was guaranteed to her by the Treaty of Guadalupe-Hidalgo, that her title was confirmed in the United States Patent granted Antonio Maria Peralta, a son of Don Luis Peralta, in 1874, and that through mesne conveyances, his interests have passed to her.

The appellant's claim therefor is exactly the same claim which she has litigated previously in *Elinor E. Petersen v. United States,* 327 F. 2d 219 (1964), and in *South Shore Land Company v. Elinor Petersen,* 230 CA 2d 628 (1964). In the above-mentioned cases, the claim of appellant to an interest in the same tidelands described in her amended complaint was rejected.

For the Court's edification, a brief history of the Peralta claims is presented.

On June 20, 1820, the Governor of Alta, California, delivered to Don Luis Peralta, a sergeant of the Spanish Army, a deed covering a large portion of what is now Alameda County, California. The deed described the boundary of the grant along San Francisco Bay as "profundo mar," or the bottom of the sea.

Mexican Independence from Spain in 1821 did not result in any change in the scope of the Spanish

Grant. When the Mexican Government ceded California to the United States by the Treaty of Guadalupe-Hidalgo of 1848, provision was made to protect the property rights of Mexican citizens in the ceded territory.

In order to implement the treaty and provide for the orderly adjudication of the property claims of Mexican citizens, Congress in 1851 set up a United States Commission to hear and determine claims of the Mexican citizens. 9 U.S. Stat. 631. The Act provided for appeals to the federal courts from the decision of the commissioners, and for the grant of United States Land Patents to successful Mexican claimants.

Four sons of Don Luis Peralta presented claims to the Commission including Antonio Maria Peralta, appellant's alleged predecessor in interest. The claim of two of Don Luis Peralta's sons, Vincente and Domingo Peralta, was adjudicated, appealed to the District Court, and subsequently appealed to the Supreme Court of the United States pursuant to the Act of Congress of 1851. *United States v. Peralta,* 60 U.S. 343, 15 L.Ed. 678 (1857).

Antonio Maria Peralta, appellant's alleged predecessor, urged that his claim extended to the "profundo mar," but this argument was rejected by the Commission. Peralta appealed to the United States District Court which affirmed the Commissioners. Thereafter, on June 5, 1874, Antonio Maria Peralta was granted a United States Patent describing the boundary of his property fronting on San Francisco

Bay as being the line of ordinary high tide. Said line of ordinary high tide was further described in said patent by courses and distances.

It is well settled that such a United States land patent is a final judgment and an adjudication of all the alleged rights of Peralta. *De Guzer v. Banning,* 91 Cal. 400 (1891), Affirmed 167 U.S. 723 (1897). The Peralta patent is not now subject to any modification, alteration or amendment, but is an adjudication of the boundaries and the extent of his property. *Fossat v. United States,* 69 U.S. 649, 17 L.Ed. 739 (1864); *Higuera v. United States,* 72 U.S. 827, 18 L.Ed. 469 (1865).

Any claims based upon the original Spanish Land Grant, or upon the Treaty of Guadalupe-Hidalgo, or the Act of Congress of 1851 were adjudicated by the commissioners, affirmed by the District Court, and settled by the Patent to Antonio Maria Peralta. Appellant cannot now collaterally attack that patent and claim a greater extent for her alleged predecessor. If appellant is a successor of Peralta, she is bound by the patent granted Peralta, and that patent conveyed no interest in the tidelands, but by its terms stopped at the line of ordinary high tide.

(B) Reclaimed Tidelands

The lands involved in this litigation are reclaimed tidelands of San Francisco Bay lying in the southern part of the City of Alameda, California. Appellant believes that the reclamation of the tidelands established a new line of ordinary high tide, and that her

alleged boundary shifts because of the change of such line of ordinary high tide.

Assuming for the sake of argument that appellant is an abutting upland owner, the law is well settled that an abutting land owner is entitled to all natural accretions to his land, but that he acquires no right, title or interest to any tidelands artificially filled. *City of Newport Beach v. Fager,* 39 CA 2d 23 (1940); *Los Angeles Athletic Club v. Santa Monica,* 63 CA 2d 795 (1944); *People v. Heches,* 179 CA 2d 823 (1960); *Patton v. Los Angeles,* 169 Cal. 521 (1915); *Petersen v. United States,* 327 F. 2d 219 (1964); and *South Shore Land Company v. Petersen,* 230 CA 2d 628 (1964).

The lands involved in this action were created by artificial filling operations conducted by one of the appellee's predecessor in interest, and are seaward or below the line of ordinary high tide described in the Peralta Patent. Appellant as an alleged successor in interest to Peralta, acquired no interest in any lands seaward or below the line of ordinary high tide. Twice, this very question has previously been adjudicated contrary to appellant's assertions. *South Shore Land Company v. Petersen,* (*supra*). *Petersen v. United States,* (*supra*).

It is clear from the foregoing that there are no facts alleged in appellant's amended complaint which would state a claim upon which relief could be granted, since under no theory would she be entitled to quiet title to the real property described in her amended complaint.

II. LACK OF JURISDICTION

It is also submitted that the Federal District Court lacked jurisdiction of the subject matter of this claim, and that its order dismissing said amended complaint should be affirmed. Appellant bases her claim to the Federal District Court's jurisdiction on three sections of Title 28, United States Code:

Section 1331—Federal Questions
Section 1338—Patents, Copyrights and Trademarks
Section 1354—Conflicting Legislative Grants

Appellant in her amended complaint further asserted jurisdiction based upon diversity of citizenship, but appears to have waived this ground on appeal.

(a) 1331—Federal Question

Federal courts have long been strict in matters involving the so-called "federal question" jurisdiction under Title 28 U.S.C. 1331, and they require that a substantial issue under the United States Constitution, treaties or laws be presented before jurisdiction will attach. Essentially, the federal issue must be a substantial part of the plaintiff's claim, and it must clearly appear from well-pleaded allegations of the complaint that such federal question appears. *Gully v. First National Bank,* 299 U.S. 109, 81 L.Ed. 70 (1936).

There have been numerous cases in which plaintiffs have claimed federal jurisdiction alleging that their rights derived from Spanish or French land grants, and that their rights were protected by United States

Treaty, Congressional acts pursuant to such treaties, and confirmed United States Land Patents. In these cases, it has been uniformly and consistently held that a federal question has not been raised. *Muse v. Arlington,* 168 U.S. 430, 42 L.Ed. 531 (1897); *Crystal Springs Land & Water Co. v. Los Angeles,* 177 U.S. 169, 44 L.Ed. 720 (1900); *Joy v. St. Louis,* 201 U.S. 332, 50 L.Ed. 776 (1905); *Devine v. Los Angeles,* 202 U.S. 313, 50 L.Ed. 1046 (1906); *Huckins v. Duval County, Florida,* 286 F. 2d 46 (1960).

It has been held that it must appear on the face of the complaint that a right, privilege or immunity dependent upon the United States Constitution, United States Treaty or law will be established or defeated by proper construction of the Constitution, Treaty or law. A naked allegation that an action arises out of or derives from the Constitution, a Treaty or federal law is insufficient. *Little York Gold Washing & Water Co. v. Keyes,* 96 U.S. 199, 24 L.Ed. 656 (1877); *Shreveport v. Cole,* 129 U.S. 36, 32 L.Ed. 589 (1889); *Filhiol v. Maurice,* 185 U.S. 108, 46 L.Ed. 829 (1901); *Gardner v. Schaffer,* 120 F. 2d 840 (1941).

Further, the United States Constitution does not confer any jurisdiction on the District courts. Article III, section 1, reads:

> "The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Thus, Congress establishes jurisdiction of the District courts, and it is not required to give the full measure

of jurisdiction possible under the broad language of Article III, section 2. *Kline v. Burke Construction Co.,* 260 U.S. 226 (1922); *Sheldon v. Sill,* 49 U.S. 441 (1850).

It is submitted that appellant has entirely failed to raise a substantial federal issue in her amended complaint, and further, that she cannot amend her complaint to do so.

(b) 1338—Patents, Copyrights and Trademarks

Appellant urges upon this appeal that the jurisdiction of the Federal District Court is founded upon the Patent, Copyright and Trademark jurisdiction of that court. This novel notion apparently involves the appellant's alleged United States Land Patent. This argument deserves no comment except that it has been consistently held under the authority cited above that claims arising under United States Land Patents are not cognizable in the federal courts.

(c) 1354—Conflicting Legislative Grants

Section 1354 states:

> "The district courts have original jurisdiction of actions between citizens of the same state claiming lands under grants from different states."

Appellant has alleged no facts which would show that two states have made conflicting grants to the same land. In fact, appellant relies solely on a United States Land Patent, which is not a grant from a State, but is a grant from the United States. It is clear that this action does not involve grants from two states.

In view of the foregoing, it is respectfully submitted that the judgment in favor of appellees should be affirmed.

Dated, May 25, 1967.

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CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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